

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF TEXAS TEXARKANA DIVISION

JUSTIN CONWAY

VS.

DIRECTOR, TDCJ-CID

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§

CIVIL ACTION NO. 5:14-CV-32

MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Petitioner Justin Conway, a prisoner confined at the Telford Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Court ordered that this matter be referred to the Honorable Caroline Craven, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. Before the Court is the Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of the petition. Docket No. 13.

The Report and Recommendation, issued on May 2, 2016, recommended dismissing the petition because Petitioner Justin Conway is barred by the statute of limitations. *Id.* at 2–4. The Magistrate Judge also considered, alternatively, the merits of the petition and recommended denying the petition because Petitioner did not demonstrate that his rights to due process were violated, that the disciplinary hearing officer was biased, or that the evidence presented at the disciplinary hearing was insufficient. *Id.* at 4–6. The Court received an acknowledgment of receipt revealing that Petitioner received the Report and Recommendation on May 16, 2016.

Docket No. 14. No written objections were filed. Having considered the Report and Recommendation for plain error, along with the record, pleadings and all available evidence, the Court **ADOPTS** the findings and conclusions of the Magistrate Judge as those of the Court.

Additionally, in this case, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED.R. APP.P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). If the petition was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

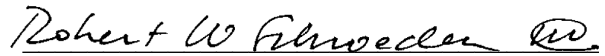
The petitioner has not shown that any of the issues raised by his claims are subject to

debate among jurists of reason, or that a procedural ruling was incorrect. In addition, the questions presented are not worthy of encouragement to proceed further. The petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability.

CONCLUSION

For the reasons stated above, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the Report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation. A certificate of appealability will not be issued.

SIGNED this 20th day of July, 2016.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE